

***2012 ANNUAL REPORT  
LEGISLATIVE COUNCIL  
RULES CLEARINGHOUSE***

**WISCONSIN LEGISLATIVE COUNCIL**

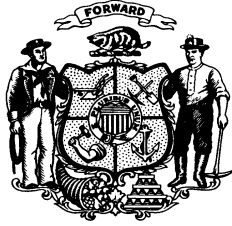
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**February 2013**

State of Wisconsin  
JOINT LEGISLATIVE COUNCIL

*Co-Chairs*  
**LUTHER OLSEN**  
Senator

**JOAN BALLWEG**  
Representative



**LEGISLATIVE COUNCIL STAFF**  
**Terry C. Anderson**  
*Director*  
**Laura D. Rose**  
*Deputy Director*

February 2013

TO: THE HONORABLE SCOTT WALKER, GOVERNOR, AND THE WISCONSIN  
LEGISLATURE

This report of the calendar year 2012 activity of the Legislative Council Rules  
Clearinghouse is submitted to you pursuant to s. 227.15 (5), Stats.

Sincerely,

Terry C. Anderson  
Director

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**WISCONSIN LEGISLATIVE COUNCIL STAFF**  
**2012 ANNUAL REPORT ON THE**  
**LEGISLATIVE COUNCIL RULES CLEARINGHOUSE\***

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\* This Report was prepared by Scott Grosz and Jessica Karls-Ruplinger, Co-Directors, Legislative Council Rules Clearinghouse.



## **FUNCTION OF THE LEGISLATIVE COUNCIL** **RULES CLEARINGHOUSE**

### **REVIEW OF RULES**

Legislative review of proposed permanent administrative rules begins with the submission of a rule to the Legislative Council Rules Clearinghouse. Section 227.15, Stats., requires that, prior to any public hearing on a proposed rule or prior to notification of the chief clerk of each house of the Legislature if no hearing is held, an agency must submit the proposed rule to the Legislative Council Rules Clearinghouse for staff review. [See the *Administrative Rules Procedures Manual* (November 2011), prepared jointly by the Legislative Council and the Legislative Reference Bureau, for more information on drafting, promulgating, and reviewing administrative rules. The Manual is available online at: <http://legis.wisconsin.gov/lc/adminrules/index.html>.]

The Legislative Council has 20 working days, following receipt of a proposed rule, to prepare a report on its review of the rule. However, with the consent of the Director of the Legislative Council, the review period may be extended for an additional 20 working days.

Upon receipt of a proposed rule, a Clearinghouse Rule number is assigned and submission of the rule is recorded in the *Bulletin of Proceedings* of the Wisconsin Legislature. Two numbered rule jackets, one for the Assembly and one for the Senate, are prepared.

The Co-Directors of the Rules Clearinghouse assign the rule to a Legislative Council staff member for review and preparation of the statutorily required report. The staff member generally prepares the report within 10 working days and transmits the report to a Co-Director for final review. When the report on the proposed rule is completed, the staff returns the rule jackets and the Clearinghouse report containing the results of the review to the agency. [See *Appendix 1* for a sample Clearinghouse report.]

In accordance with s. 227.15, Stats., the Clearinghouse report:

1. Reviews the statutory authority under which the agency intends to adopt the proposed rule.
2. Reviews the proposed rule for form, style, and placement in the Wisconsin Administrative Code.
3. Reviews the proposed rule for conflict with, or duplication of, existing rules.
4. Reviews the proposed rule to ensure that it provides adequate references to related statutes, rules, and forms.

5. Reviews the language of the proposed rule for clarity, grammar, and punctuation and to ensure the use of plain language.

6. Reviews the proposed rule to determine potential conflicts and to make comparisons with related federal statutes and regulations.

7. Reviews the proposed rule to determine whether the agency has specified the number of business days within which the agency will review and make a determination on an application for a business permit.

As part of this review process, staff of the Legislative Council is directed to ensure that procedures for the promulgation of the rule are followed, as required by ch. 227, Stats., and to streamline and simplify the rule-making process.

### **OTHER RELATED RESPONSIBILITIES**

Other primary rule review responsibilities of the Legislative Council include:

1. Working with and assisting the appropriate legislative committees throughout the rule-making process.

2. Notifying the Joint Committee for Review of Administrative Rules (JCRAR) and appropriate committees of the Legislature whenever the rule-making authority of an agency is eliminated or significantly changed by the repeal, amendment, or creation of a statute, by the interpretive decision of a court of competent jurisdiction, or for any other reason.

3. Assisting the public in resolving problems related to administrative rules. This function includes providing information, identifying agency personnel who may be contacted in relation to rule-making functions, describing locations where copies of rules, proposed rules, and forms are available, and encouraging and assisting participation in the rule-making process.

4. Creating and maintaining an Internet site that includes a copy of each proposed rule in a format that allows the site to be searched using keywords.

The final responsibility of the Legislative Council is the submission of an annual report to the chief clerk of each house of the Legislature and to the Governor summarizing any action taken by the staff and making recommendations to streamline the rule-making process and to eliminate obsolete, duplicative, and conflicting rules. This report is the 33rd *Annual Report* submitted by the Legislative Council and covers the staff's activities during calendar year 2012. It has been preceded by an initial report to the 1979 Legislature, which covered the staff's activities from November 2, 1979 to April 1, 1980 (i.e., from the effective date of Ch. 34, Laws of 1979, which initiated the omnibus rule review process, to the end of Floorperiod IV of the 1979 Session) and annual reports for calendar years 1980 to 2011.

## **RECORDKEEPING SYSTEM**

The Legislature's *Bulletin of Proceedings* is used for recording actions relating to the review of administrative rules. The Legislative Council, the Senate and Assembly Chief Clerks, and the Legislative Reference Bureau cooperate in a computerized recordkeeping system. Commencing with the 1979 Session, action on administrative rules has been shown in a separate part of the *Bulletin of Proceedings*.

Under this system, each proposed rule is assigned a Clearinghouse Rule number and entered in the computer system by the staff of the Legislative Council. A copy of the Clearinghouse report is placed in a Senate rule jacket and an Assembly rule jacket (similar to bill jackets) and the two rule jackets are then transmitted to the agency promulgating the rule. After transmittal, all legislative actions taken on the rule are entered on the face of the respective jacket and are reported to the chief clerk of each house. The chief clerk enters the actions in the computer system, thereby compiling a history of all legislative actions taken on the rule.

At the beginning of each biennial session, the administrative rule portion of the *Bulletin of Proceedings* is updated by deletion of all records relating to rules which, in the preceding session, have become effective, have been withdrawn, or have been permanently objected to by law. Also removed from the *Bulletin of Proceedings* annually and withdrawn from the rule-making process is any proposed rule that, in accordance with s. 227.14 (6) (c), Stats., has been pending for at least four years, but no more than five years, after the date of its receipt by the Legislative Council under s. 227.15 (1), Stats. The final *Bulletin of Proceedings* printed for the preceding session then serves as the permanent record of the disposition of those rules. The remaining rules, which are still in the promulgation process, are carried over into the new *Bulletin of Proceedings* for the following biennial session.

Access to rules and agency reports over the Internet became available in 2001 for all rules initiated after the year 2000. These materials may be found at the Legislative Council's website, [www.legis.wisconsin.gov/lc](http://www.legis.wisconsin.gov/lc). A useful executive branch website for information about administrative rules is <https://health.wisconsin.gov/admrules/public/Home>.



### **SIGNIFICANT CHANGES TO THE RULE-MAKING PROCESS IN 2012**

The Dane County Circuit Court, in *Coyne v. Walker* (Case No. 11-CV-4573), held that 2011 Wisconsin Act 21 is unconstitutional as it applies to rule-making by the State Superintendent of Public Instruction. Act 21, which took effect on June 8, 2011, made significant changes to the rule-making process, including the following: (1) placing new limitations on agency rule-making authority; (2) requiring approval by the Governor of scope statements and final draft rules for both emergency and proposed permanent rules; (3) requiring that all agencies prepare economic impact analyses for proposed permanent rules; and (4) requiring referral of all proposed permanent rules to JCRAR.

Specifically, the court held that the provisions in Act 21 relating to the approval of scope statements and final draft rules by the Governor and the approval of the Secretary of the Department of Administration (DOA) in certain circumstances violate the Wisconsin Constitution, and the court voided those provisions as they apply to rule-making by the State Superintendent. Legislative Council Information Memorandum 2012-16 contains a detailed description of the court's decision: [http://legis.wisconsin.gov/lc/publications/im/IM2012\\_16.pdf](http://legis.wisconsin.gov/lc/publications/im/IM2012_16.pdf). On December 18, 2012, pursuant to s. 227.15 (4), Stats., the Rules Clearinghouse notified JCRAR members, Senate President Fred Risser, and Assembly Speaker Jeff Fitzgerald of the court's decision in *Coyne v. Walker*.



### **2012 ACTIVITIES OF THE RULES CLEARINGHOUSE**

During 2012, 55 proposed administrative rules were submitted to the Legislative Council by 16 state agencies.

As of December 31, 2012, Clearinghouse reports had been completed on 50 of the 55 proposed rules and 5 rules were in the process of review. In addition to the 50 rule reports completed on 2012 rules, reports were prepared in 2012 on 4 rules received in late 2011. Of the 54 reports completed in 2012, no rule required an extension of the review process by the Director of the Legislative Council. Clearinghouse activities in 2012 are summarized below:

|  |   |           |
|--|---|-----------|
| Rules Received in 2012                 |   | 55        |
| Withdrawn                              | 0 |           |
| No report required                     | 0 |           |
| Pending                                | 5 |           |
|  |   | -5        |
| 2012 Reports Completed                 |   | 50        |
| 2011 Reports Completed in January 2012 |   | 4         |
| <b>Total Reports in 2012</b>           |   | <b>54</b> |

The table below shows that, from November 2, 1979 (the beginning of the omnibus rule review process) through December 31, 2012, the Clearinghouse has received 6,142 rule submissions and completed reviews on 6,045 proposed rules. Of the total rule submissions, 93 were exempt from the reporting process for various reasons and 4 were under review at the end of 2012.

| <i>Year</i>  | <i>Received</i> | <i>Completed</i> | <i>Exempt</i> |
|--------------|-----------------|------------------|---------------|
| 1979         | 70              | 45               | 12            |
| 1980         | 252             | 227              | 24            |
| 1981         | 252             | 234              | 9             |
| 1982         | 251             | 254              | 3             |
| 1983         | 222             | 220              | 4             |
| 1984         | 255             | 247              | 2             |
| 1985         | 213             | 206              | 4             |
| 1986         | 251             | 252              | 4             |
| 1987         | 182             | 186              | 1             |
| 1988         | 219             | 216              | 5             |
| 1989         | 212             | 208              | 1             |
| 1990         | 264             | 254              | 3             |
| 1991         | 199             | 205              | 2             |
| 1992         | 225             | 228              | 0             |
| 1993         | 241             | 232              | 1             |
| 1994         | 225             | 234              | 0             |
| 1995         | 236             | 224              | 2             |
| 1996         | 194             | 201              | 1             |
| 1997         | 158             | 159              | 1             |
| 1998         | 208             | 200              | 2             |
| 1999         | 170             | 177              | 1             |
| 2000         | 189             | 176              | 1             |
| 2001         | 157             | 158              | 1             |
| 2002         | 155             | 160              | 1             |
| 2003         | 126             | 127              | 2             |
| 2004         | 142             | 142              | 0             |
| 2005         | 122             | 123              | 0             |
| 2006         | 139             | 139              | 3             |
| 2007         | 117             | 114              | 0             |
| 2008         | 114             | 118              | 0             |
| 2009         | 123             | 108              | 3             |
| 2010         | 151             | 159              | 0             |
| 2011         | 53              | 57               | 0             |
| 2012         | 55              | 55               | 0             |
| <b>Total</b> | <b>6,142</b>    | <b>6,045</b>     | <b>93</b>     |

In 2012, rules were received from the following 16 state agencies:

***Number of Proposed Rules, by Submitting Agency***

|  |           |
|--|-----------|
| Department of Agriculture, Trade and Consumer Protection | 8         |
| Department of Children and Families                      | 2         |
| Department of Employee Trust Funds                       | 2         |
| Department of Financial Institutions                     | 2         |
| Department of Health Services                            | 2         |
| Department of Justice                                    | 1         |
| Department of Natural Resources                          | 6         |
| Department of Revenue                                    | 6         |
| Department of Safety and Professional Services           | 16        |
| Department of Transportation                             | 3         |
| Employment Relations Commission                          | 1         |
| Higher Educational Aids Board                            | 1         |
| Insurance Commissioner                                   | 1         |
| Public Service Commission                                | 1         |
| State Public Defender                                    | 2         |
| Technical College System Board                           | 1         |
| <b>Total Number of Rules Submitted</b>                   | <b>55</b> |

Although the statistics presented in this report give some indication of the workload of the Legislative Council staff in reviewing proposed administrative rules, it should be noted that rules vary in length. Similarly, Clearinghouse reports vary from completion of a simple checklist to large reports. In summary, for all rule reports completed in 2012, the Legislative Council staff commented on:

1. The *statutory authority* of a proposed administrative rule on 16 occasions.
2. The *form, style and placement* of proposed administrative rules in the Wisconsin Administrative Code on 49 occasions.
3. A *conflict* with, or *duplication* of, existing rules on one occasion.
4. The *adequacy of references* of proposed administrative rules to related statutes, rules and forms on 27 occasions.
5. *Clarity, grammar, punctuation and use of plain language* in proposed administrative rules on 43 occasions.
6. The *potential conflicts* of proposed administrative rules with, and their comparability to, related federal statutes and regulations on no occasions. In addition, the Legislative Council

staff has adopted a policy of noting when proposed rules are based on federal “*guidelines*,” which do not have the force of law, as opposed to rules based on federal “*regulations*,” which do have the force of law and with which the state may have a legal obligation to comply.

7. The *permit action deadline requirement* on one occasion.

### **WORKING WITH AND ASSISTING COMMITTEES**

A Legislative Council staff attorney or analyst works with each standing committee and statutory committee, except the Joint Finance Committee. When a committee has a proposed rule referred to it by the presiding officer of the house, the staff member will participate in the committee’s oversight.

During 2012, legislative committees held hearings or requested meetings on 10 proposed rules. Modifications to rules were either requested or received in the legislative review of three proposed rules. Legislative committees did not object to any rules during the year.

There were 40 rules subject to JCRAR jurisdiction in 2012, including one rule that received a standing committee objection in 2011 (CHR 11-011). In that case, JCRAR held a public hearing and received modifications to the rule but took no further action. The remaining rules were subject to JCRAR jurisdiction in 2012 as a result of the 2011 Wisconsin Act 21 requirement, effective June 8, 2011, that all rules be referred to JCRAR following standing committee review.\* In 2012, JCRAR held a public hearing on one proposed permanent rule as described above.

The table below reviews legislative committee activity in the review of proposed administrative rules beginning on November 2, 1979 and ending on December 31, 2012.

| LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES<br>(November 2, 1979 Through December 31, 2011)* |                 |                               |                             |                       |  |  |
|--|-----------------|-------------------------------|-----------------------------|-----------------------|--|--|
| Year   | Rules Submitted | Rules Subject to Modification | Committee Review Objections | JCRAR Rule Objections | Enacted Laws Following Rule Objections | Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections                              |
| 11/2/79–80   | 322             | 18                            | 5                           | 1                     | 0                                      | No bill introduced, rule withdrawn   |
| 1981   | 252             | 29                            | 10                          | 4                     | 4                                      | Chapters 20 (SEC. 1561), 26, 31 and 180, Laws of 1981  |
| 1982   | 251             | 31                            | 4                           | 1                     | 1                                      | 1983 Wisconsin Act 94  |
| 1983   | 222             | 30                            | 5                           | 0                     | 0                                      | —  |
| 1984   | 255             | 26                            | 2                           | 2                     | 2                                      | 1983 Wisconsin Act 310 and 1985 Wisconsin Act 29 (SEC. 826)  |
| 1985   | 213             | 37                            | 8                           | 3                     | 2                                      | ♦ 1985 Wisconsin Act 29 (SECS. 1059r and 2238ng to 2238or)<br>♦ 1985 Assembly Bill 460, passed and vetoed; override failed |
| 1986   | 251             | 30                            | 1                           | 0                     | 0                                      | —  |
| 1987   | 182             | 30                            | 5                           | 0                     | 0                                      | —  |
| 1988   | 219             | 38                            | 4                           | 0                     | 0                                      | —  |

\* Prior to Act 21, only rules receiving a standing committee objection had to be referred to JCRAR. Act 21 requires that all rules be referred to JCRAR, but only requires that JCRAR take action on rules that received a standing committee objection.

| LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES<br>(November 2, 1979 Through December 31, 2011)* |                 |                               |                             |                       |  |   |
|--|-----------------|-------------------------------|-----------------------------|-----------------------|--|---|
| Year   | Rules Submitted | Rules Subject to Modification | Committee Review Objections | JCRAR Rule Objections | Enacted Laws Following Rule Objections | Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections   |
| 1989   | 212             | 22                            | 6                           | 2                     | 0                                      | ♦ 1989 Senate Bill 89 and 1989 Assembly Bill 171 (failed to pass)<br>♦ 1989 Senate Bill 248 and 1989 Assembly Bill 457 (failed to pass)   |
| 1990   | 264             | 29                            | 2                           | 1                     | 0                                      | ♦ 1991 Senate Bill 24 and 1991 Assembly Bill 71 (failed to pass)  |
| 1991   | 199             | 19                            | 5                           | 1                     | 0                                      | ♦ 1991 Senate Bill 442 and 1991 Assembly Bill 840 (failed to pass after rule objected to withdrawn by agency)   |
| 1992   | 225             | 33                            | 3                           | 2                     | 1                                      | ♦ 1993 Wisconsin Act 9<br>♦ 1993 Senate Bill 3 and 1993 Assembly Bill 17 (failed to pass)   |
| 1993   | 241             | 24                            | 1                           | 0                     | 0                                      | —   |
| 1994   | 225             | 29                            | 3                           | 0                     | 0                                      | —   |
| 1995   | 236             | 19                            | 0                           | 0                     | 0                                      | —   |
| 1996   | 194             | 19                            | 1                           | 1                     | 1                                      | ♦ 1997 Assembly Bill 5 and 1997 Senate Bill 20 (failed to pass)<br>♦ 1997 Wisconsin Act 237 (SECS. 320s, 322d and 322e)   |
| 1997   | 158             | 19                            | 6                           | 0                     | 0                                      | —   |
| 1998   | 208             | 15                            | 0                           | 0                     | 0                                      | —   |
| 1999   | 170             | 18                            | 2                           | 1                     | 0                                      | —   |
| 2000   | 189             | 20                            | 2                           | 1                     | 1                                      | ♦ 1999 Wisconsin Act 178  |
| 2001   | 157             | 14                            | 5                           | 2                     | 0                                      | ♦ 2001 Assembly Bill 18 and Senate Bill 2 (failed to pass);<br>♦ 2001 Assembly Bill 524 and Senate Bill 267 (failed to pass)<br>♦ 2001 Assembly Bill 697 and Senate Bill 361 (failed to pass)   |
| 2002   | 155             | 35                            | 2                           | 1                     | 0                                      | ♦ 2003 Assembly Bill 25 and Senate Bill 19 (failed to pass)   |
| 2003   | 126             | 20                            | 2                           | 2                     | 0                                      | ♦ 2003 Assembly Bill 253 and Senate Bill 123 (failed to pass)   |
| 2004   | 142             | 21                            | 4                           | 2                     | 1                                      | ♦ 2003 Wisconsin Act 240  |
| 2005   | 122             | 20                            | 4                           | 3                     | 0                                      | ♦ 2005 Assembly Bill 8 and Senate Bill 8 (failed to pass)<br>♦ 2005 Assembly Bill 12 and Senate Bill 12 (failed to pass)<br>♦ 2005 Assembly Bill 401 and Senate Bill 200 (failed to pass)<br>♦ 2005 Assembly Bill 404 and Senate Bill 201 (failed to pass)<br>♦ 2005 Assembly Bill 442 and Senate Bill 220 (failed to pass) |

| LEGISLATIVE REVIEW OF PROPOSED ADMINISTRATIVE RULES<br>(November 2, 1979 Through December 31, 2011)* |                 |                               |                             |                       |  |   |
|--|-----------------|-------------------------------|-----------------------------|-----------------------|--|---|
| Year   | Rules Submitted | Rules Subject to Modification | Committee Review Objections | JCRAR Rule Objections | Enacted Laws Following Rule Objections                       | Enactments by Session Law and Other Description of Bills Introduced Following Rule Objections   |
| 2006   | 139             | 21                            | 8                           | 4                     | 0  | ♦ 2005 Assembly Bill 1225 and Senate Bill 732 (failed to pass, late introduction in 2005 Session and reintroduction in 2007 session as Assembly Bill 37 and Senate Bill 9)<br>♦ 2005 Assembly Bill 1226 and Senate Bill 733 (failed to pass; late introduction in 2005 Session and reintroduction in 2007 session as Assembly Bill 27 and Senate Bill 10) |
| 2007   | 117             | 16                            | 2                           | 0                     | 0  | —   |
| 2008   | 114             | 13                            | 1                           | 0                     | 0  | —   |
| 2009   | 123             | 4                             | 0                           | 0                     | 0  | —   |
| 2010   | 151             | 16                            | 1                           | 0                     | 0  | —   |
| 2011   | 53              | 6**                           | 2                           | 1                     | 0  | ♦ 2011 Assembly Bill 196 and Senate Bill 139 (failed to pass)   |
| 2012   | 55              | 3**                           | 0                           | 0                     | 0  | —   |
| TOTAL  | 6,142           | 724                           | 106                         | 35                    | 13 (PLUS ONE BILL PASSED AND VETOED;<br>VETO NOT OVERRIDDEN) |   |

\* The general system of legislative review of proposed administrative rules, primarily embodied in ss. 227.15 and 227.19, Stats., took effect on November 2, 1979, as part of Ch. 34, Laws of 1979.

\*\* Includes rules modified by JCRAR.

## **ELECTRONIC ACCESS**

In 2001, the Legislature, through its service agencies, began providing electronic access to all proposed administrative rules submitted to the Clearinghouse. The system mirrors the process already in place for legislative proposals. That is, interested persons are able to use the Internet to search for proposed rules directly or to link to them from the Legislature's Bulletin of Proceedings. The site holds the initial version of the proposed rule, the Clearinghouse report on the proposed rule, all modified versions of the proposed rule submitted to the Legislature, and the related agency report to the Legislature. It also has the economic impact analyses and fiscal estimates prepared by agencies, as well as reports prepared by the Small Business Regulatory Review Board.

Electronic access is available for proposed rules submitted to the Clearinghouse after the year 2000. [The Clearinghouse also has given advice to the Department of Health and Family Services (now the Department of Health Services) regarding a searchable rules website operated by the Executive Branch. That website is now operated by the Department of Administration. The website is <https://health.wisconsin.gov/admrules/public/Home>.]

## **NOTICE OF CHANGE IN RULE-MAKING AUTHORITY**

The changes in rule-making authority with respect to the State Superintendent of Public Instruction as a result of the Dane County Circuit Court decision in *Coyne v. Walker* (Case No.

11-CV-4573) were described in Legislative Council Information Memorandum 2012-16: [http://legis.wisconsin.gov/lc/publications/im/IM2012\\_16.pdf](http://legis.wisconsin.gov/lc/publications/im/IM2012_16.pdf).

On December 18, 2012, pursuant to s. 227.15 (4), Stats., the Rules Clearinghouse notified JCRAR members, Senate President Fred Risser, and Assembly Speaker Jeff Fitzgerald of the court's decision in *Coyne v. Walker*.

### **ASSISTING THE LEGISLATURE AND STATE AGENCIES**

In 2012, the Legislative Council Rules Clearinghouse staff responded to more than the usual number of questions concerning the rule-making process and the laws governing legislative and gubernatorial review of proposed rules, as a result of the changes enacted in 2011 Wisconsin Act 21.

### **PUBLIC LIAISON**

In 2012, the Rules Clearinghouse staff received a number of requests from the public for information about aspects of the rule-making process or the status of specific rules.

SG:JKR:jal



***APPENDIX 1***  
***SAMPLE CLEARINGHOUSE REPORT***





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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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**Pam Shannon**  
*Clearinghouse Director*

**Terry C. Anderson**  
*Legislative Council Director*

**Scott Grosz and Jessica Karls-Ruplinger**  
*Clearinghouse Assistant Directors*

**Laura D. Rose**  
*Legislative Council Deputy Director*

### CLEARINGHOUSE REPORT TO AGENCY

[THIS REPORT HAS BEEN PREPARED PURSUANT TO S. 227.15, STATS. THIS IS A REPORT ON A RULE AS ORIGINALLY PROPOSED BY THE AGENCY; THE REPORT MAY NOT REFLECT THE FINAL CONTENT OF THE RULE IN FINAL DRAFT FORM AS IT WILL BE SUBMITTED TO THE LEGISLATURE. THIS REPORT CONSTITUTES A REVIEW OF, BUT NOT APPROVAL OR DISAPPROVAL OF, THE SUBSTANTIVE CONTENT AND TECHNICAL ACCURACY OF THE RULE.]

### CLEARINGHOUSE RULE 12-002

AN ORDER to repeal PT 3.01 (7); renumber and amend PT 1.02 (1) to (6), 1.03 (1) (c), 3.01 (title), 3.04 (4), 4.01 (4), 8.05 (intro.), and 9.01; to repeal and recreate PT 1.01; and to create PT 2.001, 2.01 (1) (j), 3.001, 3.002, 3.02, 4.001, 5.001, 6.001, and 9.02 (5), relating to licensure, examinations, temporary licenses, locum tenens license, referrals, and continuing education.

Submitted by **DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES**

01-06-2012 RECEIVED BY LEGISLATIVE COUNCIL.

02-02-2012 REPORT SENT TO AGENCY.

SG:MSK

## **LEGISLATIVE COUNCIL RULES CLEARINGHOUSE REPORT**

This rule has been reviewed by the Rules Clearinghouse. Based on that review, comments are reported as noted below:

1. STATUTORY AUTHORITY [s. 227.15 (2) (a)]

Comment Attached

YES ☒

NO ☐

2. FORM, STYLE AND PLACEMENT IN ADMINISTRATIVE CODE [s. 227.15 (2) (c)]

Comment Attached

YES ☒

NO ☐

3. CONFLICT WITH OR DUPLICATION OF EXISTING RULES [s. 227.15 (2) (d)]

Comment Attached

YES ☐

NO ☒

4. ADEQUACY OF REFERENCES TO RELATED STATUTES, RULES AND FORMS  
[s. 227.15 (2) (e)]

Comment Attached

YES ☒

NO ☐

5. CLARITY, GRAMMAR, PUNCTUATION AND USE OF PLAIN LANGUAGE [s. 227.15 (2) (f)]

Comment Attached

YES ☒

NO ☐

6. POTENTIAL CONFLICTS WITH, AND COMPARABILITY TO, RELATED FEDERAL  
REGULATIONS [s. 227.15 (2) (g)]

Comment Attached

YES ☐

NO ☒

7. COMPLIANCE WITH PERMIT ACTION DEADLINE REQUIREMENTS [s. 227.15 (2) (h)]

Comment Attached

YES ☐

NO ☒



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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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*Legislative Council Deputy Director*

### CLEARINGHOUSE RULE 12-002

#### Comments

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Legislative Reference Bureau and the Legislative Council Staff, dated November 2011.]**

#### **1. Statutory Authority**

In s. PT 1.02 (12), it appears that the phrase “or physical therapist assistant” should be deleted, because only physical therapists, and not assistants, are authorized for temporary licensure by the referenced s. 448.53 (2), Stats. Physical therapist assistants are also not authorized for temporary licensure under their governing statute, s. 448.535, Stats. Consequently, in addition, in s. PT 3.01 and throughout ch. PT 3, all references to a physical therapist assistant having temporary licensure should be deleted. Alternatively, if the board wishes to authorize physical therapist assistants for temporary licensure, it should explain the statutory authority for that decision.

#### **2. Form, Style and Placement in Administrative Code**

a. In the plain language analysis, the references to specific administrative rule sections should include an “s.” before the “PT” citation in the descriptions of SECTIONS 1, 2, 3, 4, 5, 7, 8, 9, 10, 12, 13, 14, and 15.

b. In the plain language analysis, “s.” should be inserted before the two references to “227.114 (1), Stats.”

c. In the enumeration of provisions treated portion of the introductory clause, the initials “PT” need only be referred to at the beginning of each particular treatment. [See s. 1.02 (1) (Example), Manual.] Also, in the enumeration of provisions treated and SECTION 13, “(intro.)” should replace “(intro)” following the reference to s. PT 8.05.

d. In SECTION 2 of the proposed rule, the contemplated treatment would be more appropriately described as an amendment of s. PT 1.02, rather than renumbering and amending s. PT 1.02 (1) to (6).

e. In s. PT 3.002 (3), “Continuing competence” should be placed in quotation marks, and “that” should replace “which”. Also, this definition is very vague, and does not provide a clear standard. The definition should be removed or revised. Since there is a single definition in this section, it is not necessary to create a sub. (3). [See s. 1.03 (1), Manual.]

f. In ss. PT 3.002 and 6.001, the titles should end with a period.

g. In SECTION 7 of the proposed rule, the treatment should apply generally to s. PT 3.01 (1), since the title of that subsection as well as the subsection text are amended. A comma should follow the amendment of the text.

h. In SECTION 8 and SECTION 11, periods should follow the section numbers.

i. In SECTION 11, the contemplated treatment should be split into separate SECTIONS as described in s. 1.04, Manual.

j. In s. PT 8.05, “s.” should be inserted before the reference to “PT 3.03”. Also, “3.02” should replace “3.03”. Also, is the reference to s. PT 3.02 intended as an exception to the requirements for reinstatement? It seems that it should be “In addition to the requirements for temporary licensure under s. PT 3.02,”.

k. The effective date clause of the proposed rule should be included as a numbered section of the rule. [s. 1.02 (4), Manual.]

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. In s. PT 1.01 (1), the references to ss. 15.405 (7r) and 448.567, Stats., should be deleted, as those are beyond the stated scope of ch. PT 1.

b. In s. PT 1.01 (2), “the issuance of licenses to physical therapist assistants under s. 448.53, Stats.,” should be deleted, because the referenced section governs physical therapists, not assistants. Also, the reference to ss. 448.54 and 448.55, Stats., after “ss. 448.535,” should be reworded, as those apply to both physical therapists and assistants, not only to assistants.

c. In s. PT 2.001 (1), the reference to s. 15.405 (7r), Stats., should be deleted, as it is beyond the stated scope of ch. PT 2.

d. In s. PT 2.001 (2), a reference to s. 448.53, Stats., should be added.

e. In s. PT 3.001, “and” should precede the statutory reference to s. 448.55 (3), which should be followed by a comma before “Stats.”

f. In s. PT 4.001, “and (3)” should be inserted after “448.53 (2)”.

## **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. In the second paragraph of the plain language analysis, the phrase “temporary license to practice under supervision, initial” is confusing, because of the placement of the comma. This should be more clearly reworded, perhaps by replacing the comma with “until”. Also in that paragraph: the two instances of “returning professional” should be plural; and “direct, immediate, on premises supervision” and “direct, immediate, one-to-one supervision” should have closing quotation marks.

b. In the comparison with Iowa in the plain language analysis, “an individual whose license has” should replace “individuals whose license have” and “those individuals whose license have”.

c. In the comparison with Michigan in the plain language analysis, should “after” replace “of” in the phrase “three years of their expiration date”?

d. In the “effect on small business” section of the plain language analysis, “contacted” should replace “contracted”.

e. In s. PT 1.01 (1), the comma at the end of the subsection should be deleted.

f. In s. PT 1.02 (11), “Licensee” should have a closing quotation mark.

g. In s. PT 1.03 (5) (c), “For a physical therapist” should replace “For physical therapists”, and “for a physical therapist assistant” should replace “for physical therapist assistants”.

h. Section PT 3.02, as a whole, should be revised.

(1) In the introductory paragraph, “to a person who has applied for either a” should replace “to an applicant for a regular”.

(2) In the introductory paragraph, “reinstatement” should replace both instances of “renewal”.

(3) In the introductory paragraph, “at least” should replace “the full”.

(4) In the introductory paragraph, “An applicant shall comply with all of the following:” should be deleted. Subsections (2) to (6) are not separate requirements for the applicant.

(5) In sub. (1), “An applicant shall provide either of the following:” should replace the introductory sentence. Also, “(a)” and “(b)” should replace “a.” and “b.”, and a period should replace the semi-colon at the end of par. (a).

(6) In sub. (2), “An” should replace “Obtain an”, and the first instance of “who” should be deleted. Also, “terms acceptable to the board” does not provide a clear standard for what types of terms must be included, and should be more precisely

specified. For example, the board is presumably interested in the number of hours and level of supervision.

- i. In s. PT 5.001, a period should be added after “ss”.

***APPENDIX 2***  
***PROCESSING INSTRUCTIONS TO AGENCY HEADS***





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## WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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Scott Grosz and Jessica Karls-Ruplinger  
Clearinghouse Co-Directors

Terry C. Anderson  
Legislative Council Director

Laura D. Rose  
Legislative Council Deputy Director

### PROCESSING INSTRUCTIONS TO AGENCY HEADS

[ENCLOSED ARE THE SENATE AND ASSEMBLY RULE JACKETS CONTAINING THE LEGISLATIVE COUNCIL CLEARINGHOUSE REPORT. AN ADDITIONAL COPY OF THE CLEARINGHOUSE REPORT IS ENCLOSED FOR YOUR FILES.]

**PLEASE NOTE:** Your agency must complete the following steps in the legislative process of administrative rule review:

1. On the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Report Received by Agency."
2. On the appropriate line or lines on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date or dates and, in column 2, "Public Hearing Held" OR "Public Hearing Not Required."
3. Enclose in both clearinghouse rule jackets, in triplicate, the notice and report required by s. 227.19 (2) and (3), Stats. [The report includes the rule in final draft form.]
4. Notify the presiding officer of the Senate and Assembly that the rule is in final draft form by hand delivering the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk. At the time of this submission, on the appropriate line on the face of the clearinghouse rule jacket, each Chief Clerk will enter, in column 1, the appropriate date and, in column 2, "Report Received from Agency." Each clearinghouse rule jacket will be promptly delivered to each presiding officer for referral of the notice and report to a standing committee in each house.
5. If the agency does not proceed with the rule-making process on this rule, on the appropriate line on the face of both clearinghouse rule jackets, enter, in column 1, the appropriate date and, in column 2, "Rule Draft Withdrawn by Agency" and hand deliver the Senate clearinghouse rule jacket to the Senate Chief Clerk and the Assembly clearinghouse rule jacket to the Assembly Chief Clerk.

**FOR YOUR INFORMATION:** A record of all actions taken on administrative rules is contained in the Bulletin of Proceedings of the Wisconsin Legislature. The clearinghouse rule jackets will be retained by the Legislature as a permanent record.

[See reverse side for jacket sample.]

**—SAMPLE—**

**CLEARINGHOUSE RULE ASSEMBLY** 12-002

AN ORDER to repeal PT 3.01 (7); renumber and amend PT 1.02 (1) to (6), 1.03 (1) (c), 3.01 (title), 3.04 (4), 4.01 (4), 8.05 (intro.), and 9.01; to repeal and recreate PT 1.01; and to create PT 2.001, 2.01 (1) (j), 3.001, 3.002, 3.02, 4.001, 5.001, 6.001, and 9.02 (5), relating to licensure, examinations, temporary licenses, locum tenens license, referrals, and continuing education.

Submitted by Safety and Professional Services

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| 01-06-12 | Received by Legislative Council. |  |  |
| 02-02-12 | Report sent to Agency.           |  |  |
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**NOTE:** EACH SUBSEQUENT ACTION TAKEN BY A STANDING COMMITTEE OR THE JOINT COMMITTEE FOR REVIEW OF ADMINISTRATIVE RULES WILL BE ENTERED ON THE JACKETS BY APPROPRIATE LEGISLATIVE STAFF.